

EMPLOYEE VS INDEPENDENT CONTRACTOR

Coverage under the Workers' Compensation Law is dependent upon the existence of an employer-employee relationship. Considered collectively, the four right of control factors distinguish an employee from an independent contractor.

1. DIRECT EVIDENCE OF THE RIGHT TO CONTROL

Compliance with instructions - Control is present if the person for whom the services are performed has the right to require compliance with instructions.

Training - Training through meetings, attending classes, or apprenticeship with a more experienced worker indicates the right to control.

Integration - Integration of the worker's services into the principal's business operations shows that the worker is subject to direction and control.

Services rendered personally - If the services must be rendered personally, then the right to control is suggested.

Hiring, firing, supervising and paying assistants - If the person for whom services are rendered hires, discharges, and pays workers, then that factor shows control over all workers. If a worker engages his own assistants, he may be an independent contractor.

Set hours of work - Control is indicated if set hours of work are established by the person for whom services are rendered.

Full time required - If the worker devotes substantially full time to the business of the person for whom services are rendered, then such person has control over the amount of time the worker can work and impliedly restricts the worker from doing other gainful work.

Order or sequence determined by principal - If the worker performs services in the order or sequence determined by the person for whom the services are performed, the worker is likely an employee.

Oral or written reports - A requirement that the worker submit regular oral or written reports to the principal indicates control.

Payment of business and/or traveling expenses - If the principal ordinarily pays the worker's business or traveling expenses, then the worker is usually considered an employee.

Working for more than one firm at a time - If a worker performs service for several unrelated persons or firms at a time, this is indicative of an independent contractor relationship.

Making service available to the general public - If a worker makes his services available to the general public on a regular and consistent basis this indicates an independent contractor relationship.

Competitive selection among subcontractors - If the principal uses some competitive means for reducing his own cost in selecting a subcontractor, then the principal may be a prime contractor instead of an employer.

2. METHOD OF PAYMENT

Payment on a regular, periodic basis - Payment by the hour, week, day, month or other regular periodic interval generally points to an employer-employee relationship.

Realization of profit or loss - A worker who can realize profit or suffer a loss as a result of the worker's services (beyond the profit or loss ordinarily realized by the employees) is generally considered an independent contractor.

3. FURNISHING OF MAJOR ITEMS OF EQUIPMENT

Doing work on the employer's premises - If the work is done on the premises of the person for whom the services are performed, this shows control over the worker, especially if the work could be done somewhere else.

Furnishing tools and equipment - If the person for whom services are performed furnishes significant tools, materials, or other equipment, this indicates a direct employment relationship.

Significant investment - If the worker invests in facilities that are used in performing services and that are not typically maintained by employees, this indicates an independent contractor relationship.

Realization of profit or loss - This factor overlaps the method of payment but addresses whether sale of the business assets would provide the worker with a gain or recovery. If so, he may be an independent contractor.

4. RIGHT TO TERMINATE RELATIONSHIP WITHOUT LIABILITY

Continuing relationship - A continuing relationship between the worker and the principal indicates a direct employment relationship, even if the work is performed at recurring irregular intervals.

Right of employer to discharge - The principal's right to discharge the worker without liability indicates a direct employment relationship.

Employee's right to terminate - If the worker has the right to stop working at any time without contractual liability, this is indicative of an employment relationship.